

Petition to Withdraw the Holding of Abandonment-Application/Control Number 09/970,350

Transcript of the conversation between Mr. Michel L. Cabiran and Mr. John R. Cottingham on 11/23/2002 concerning Patent Application No. 09/970,350 in response to Office Letter mailed on 31 October 2002.

*Handwritten notes:*  
9/23/02  
1/ elect  
20  
3-2002

Background:

In the letter mailed on 31 October 2002 it is stated that claims 1-20 are pending in the application.

No. 1 of the detailed action says: "Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed."

No. 2 of the detailed action says:

"A telephone call was made to Michel L. Cabiran to request an oral election to the above restriction requirement, but did not result in an election being made.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (703) 306-3439. The examiner can normally be reached on Monday-Thursday, alternate Fridays."

Transcript:

I called Mr. Cottingham at the telephone number above on 25 November 2002 at about 2:33 EST. The conversation went as follows:

Mr. Cabiran: If the generic claim is allowable how many of the species do you think would be included?

Mr. Cottingham: All would be allowed.

Mr. Cabiran: I want to elect species 1 (from the species indicated in part 1 of the letter in question), but preserve the right to traverse the restrictions.

Mr. Cottingham: OK (or some similar acknowledgement).

Mr. Cabiran: Is there anything else you need from me? (Meaning a transcript or written response.)

Mr. Cottingham: No.

Mr. Cabiran: OK, goodbye ( or some similar farewell).

Mr. Cottingham: Goodbye ( or some similar farewell).

End of transcript.

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Attn: Don Hajec  
Director Technical Center, TC 3600  
Crystal Park 5, PK 5, Suite D32  
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9200  
#5  
Petition  
w/10  
ABAND  
11/21/03  
B

Re: Petition to Withdraw the Holding of Abandonment-Application/Control Number: 09/970,350

Dear Mr. Hajec:

I am writing because my patent application has been listed as abandoned because of "Applicants failure to timely file a proper reply to the Office letter mailed on 31 October 2002.", when in fact the applicant, myself, did file a timely reply.

The patent examiner, Mr. John Cottingham, sent me the Notice of Abandonment on 7/2/03, which I received on 7/7/03. On 7/8/03 I contacted Mr. Cottingham and told him that I had in fact called him on 11/25/02, within the 30 day time period he had requested, and given him an answer to the query he had made in the letter, which he had sent me on 10/31/02. Mr. Cottingham then said that he must have misplaced the transcript and requested that I send in a petition to revive. He told me there was no form but to call 703-305-9282. He said that they could tell me how to file the petition. He said it should not cost anything since he misplaced the transcript.

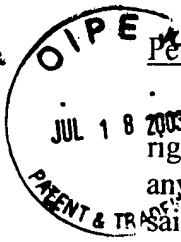
I called the number he gave and spoke with Mary Ann Morgan who gave me another number, 703-306-4180, which I called and spoke with Jill Bianca who described how to file the Petition and who to send it to.

Briefly, what happened was:

I filed for a patent on 10/31/2001 and received a receipt and license for foreign filing on 11/9/2001.

I then received an office action sent on 10/31/02 where I was informed that Mr. Cottingham had tried to contact me by telephone "to request an oral election to the above restriction requirement, but did not result in an election being made." Mr. Cottingham next wrote, "Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed." Mr. Cottingham then gave his phone number and a deadline of 30 days. I believe I received the letter about a week or week and a half after it was mailed so I did not have much time.

I researched this issue with my patent agent and called Mr. Cottingham on 11/25/03. I asked him if the generic claim is determined to be allowable, how many of the species do he think would be included. Mr. Cottingham said all. I then said that I wanted to elect species 1, but preserve the



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right to traverse the restrictions. Mr. Cottingham said OK. I asked Mr. Cottingham if there was anything else he needed from me (meaning a transcript or written response). He said no. I then said goodbye and hung up.

On 4/3/2003 I received Notice of Publication of Application.

On 7/7/2003 I received Notice of Abandonment "in view of Applicants failure to timely file a proper reply to the Office letter mailed on 31 October 2002."

I definitely did not want to abandon the patent application. I followed it very closely. I request that you take all steps necessary to withdraw the holding of abandonment on this patent application and allow Mr. Cottingham to pursue it to completion in the most efficient manner. Also, please keep me informed of that progress. If you need to get in touch with me please feel free to write to the above address, call me between 8AM and 4:45PM CST at 281-244-1197, or FAX me at 281-461-9007.

Thank you very much for your help.

Respectfully,

*Mike Cabiran*  
Mike Cabiran

Copy to: John Cottingham